

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JOSE L. ORTIZ ROCHE

Plaintiff

v.

PHYSICIAN CORRECTIONALCORP.

Defendant

CIVIL ACTION NO:23-cv-1215-(FAB)

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

COMES NOW, defendant Physician HMO, Inc, also D/B/A Physician Correctional through the undersigned attorney and very respectfully STATES and PRAYS AS FOLLOWS:

1. On May 3rd, 2023, Plaintiff filed a Prisoner Civil Rights Complaint under 42 U.S.C. §1983, alleging that he has not seen an specialist for his “craneoplastia” health condition since 2018.
2. The defendant, Physician HMO, Inc., also d/b/a Physician Correctional, is a for profit corporation duly registered in the Puerto Rico State Department, who is in charge of the operations and administration of the Correctional Health Program of the Department of Correction and Rehabilitation of Puerto Rico (DCR), pursuant to a professional services contract in effect since October 1st, 2018.
3. The instant complaint shall be dismissed for failure to comply with 42 U.S.C. §1997e(a), which states that: “No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted.”

4. In the Certification attached as **Exhibit I** of the instant motion, Mrs. Carmen Montanez Martinez, Administrative Remedies Section Officer of the Department of Correction and Rehabilitation (DCR), establish and certify that there is no administrative remedy application filed by plaintiff Ortiz Roche related to his request for a Neurologist appointment for his medical conditions. Said Certification was sent to defendant Physician Correctional's Legal Division through Mrs. Damaris Robles Dominguez, Administrative Remedies Section Coordinator. **Exhibit II.**
5. The DCR established an Administrative Remedies Program pursuant to Regulation number 8145, promulgated on January 23rd, 2012, to provide each inmate an administrative organism to consider and to adjudicate in first instance, any complaint and grievances submitted, related to confinement conditions including medical services. Said Regulation was promulgated according to Public Law 96-2476-(H.R.-10), Civil Rights of Institutionalized Person Act, approved by Congress on May 23, 1980, which provided for the creation and development of administrative entities in the correctional institutions to consider the claims of the correctional population 42 U.S.C. §1997 (1980). The D.C.R's Regulation was approved also according to Puerto Rico Law number 201 of August 22th, 2003, Judiciary Act , and according to Puerto Rico Law number 170 of August 12, 1988. 3 L.P.R.A. §2172.
6. According to the Medical Summary attached as Exhibit III, plaintiff has been treated by several specialist doctors and is receiving several medications for his Epilepsy condition. In addition, he was referred to the Neurology Clinic on May 23, 2023, and he has an upcoming appointment with Neurologist Dr. Jens Suero for August 31st, 2023.

7. Since Mr. Ortiz Roche filed the instant case on May 3rd, 2023, without even having filed an application for an administrative remedy before the administrative forum, he has failed to exhaust the administrative remedies and the complaint shall be dismissed for lack of jurisdiction with prejudice.
8. The defendant is submitting Exhibits I and III, in the Spanish language because the translations will be ready for next week. The defendant requests very respectfully a short term of five (5) working days to submit the English version.

CERTIFICATION: I hereby certify that the instant document has been filed through the court's CM-ECF system, which simultaneously notify all counsel of record.

In San Juan, Puerto Rico, this 22th day of June 2023.

RESPECTFULLY SUBMITTED.

s/Edgar R. Vega
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